

*Information for Human Resources and Business Risk Professionals in the Colorado State Personnel System*

***In this issue...***

- ***Last Day for Comp and Benefits Opinion Survey is May 14***
- *Open Enrollment for FY10-11 Ends May 20*
- *New FLSA Requirement Regarding Accommodations for Nursing Mothers*
- *Change in Non-Tax Dependent Status for Adult Dependent Children*
- *When Will the State Expand Benefits Coverage for Adult Children Up to Age 26*

**Last Day for the Classified Employees Compensation and Benefits Opinion Survey – May 14**

The opportunity for individual employees to have their voice counts ends at 5:00 pm, Friday.

**Open Enrollment for FY10-11 Ends May 20, 2010**

Remind employees this is a **mandatory** open enrollment for medical and dental insurance, and FSA benefits. Employees' current medical, dental, and FSA choices **WILL NOT** roll over into the FY 2010-11 plan year. If employees do not make elections during open enrollment, they will not have coverage come July 1, 2010.

Benefit administrators with administrative access to the Benefits Administration System should run the "Open Enrollment Status" report frequently to see who has and hasn't completed their FY10-11 Open Enrollment (see the 4-29-10 *Benefits Communiqué*, page 4. As we approach the last week of open enrollment, administrators should reach out to those employees who have not yet participated.

Other items to remember about the FY10-11 Open Enrollment.

- Open Enrollment is completed **ONLY** through the State's online Benefits Administration System (BAS), accessed at [www.colorado.gov/dpa/dhr/benefits](http://www.colorado.gov/dpa/dhr/benefits). Employees can also research their benefit options, view premiums, review online system instructions at this site – click on "FY11 Open Enrollment Information."
- Open Enrollment is the **ONLY TIME** to make changes to benefits, except in very limited, life altering circumstances. Forgetting to enroll, not confirming online choices, suffering a financial hardship, or just a change of mind are not permitted reasons for making changes beyond Open Enrollment (per IRS regulations).
- Social security numbers for spouses, same-gender domestic partners, and dependent children are required when enrolling.
- Employees should complete enrollment early to avoid last-minute problems.
- Employees should use open enrollment to update dependent information and remove any ineligible dependents (e.g., overage children, ex-spouses).
- Open enrollment is a good time for **EVERY** employee to review beneficiary information (everyone has Basic Life).
- Employees who will terminate employment with the State *before* July 1, 2010, **DO NOT PARTICIPATE** in the FY11 Open Enrollment. They should contact the State's COBRA administrator at 1.877.725.4545 for information about COBRA continuation coverage.

**New FLSA Requirement Regarding Accommodations for Nursing Mothers**

The Patient Protection and Affordable Care Act, signed into law on March 23, 2010, by President Obama (H.R. 3590), created new requirements for employers regarding accommodations for nursing mothers through an amendment to the Fair Labor Standards Act (FLSA). The law requires an

employer to provide reasonable break time for nursing mothers and to provide a private location (other than a bathroom) where employees may express milk. This requirement is in effect now and employers are expected to comply. The US Department of Labor (US DOL) will need to address this requirement through its regulatory process, which could take some time.

The State of Colorado already has the Colorado Workplace Accommodations for Nursing Mothers Act that requires an employer to make reasonable efforts to provide break time for nursing mothers and space (other than a toilet stall) where an employee can express breast milk. Under the Colorado law, employers are not required to take actions that would cause an undue hardship on the operation of the employer's business, including consideration of special circumstances for public safety. As such, certain state departments have not been required to comply.

We must now comply with both laws. Where there are conflicting provisions, the law providing the greater protection or most employee-friendly benefit applies. For example, Colorado law requires employers to make "reasonable efforts" but the FLSA states that employers "shall provide" accommodations. FLSA applies because it provides the greater benefit. The FLSA requires accommodation until the child is 12 months old, but Colorado law requires accommodation until 24 months old; thus, Colorado law applies because it is the most employee-friendly. As described above, the Colorado law allows for exceptions, but the new provision under FLSA only offers one narrow exception (i.e., small employers based on size). The State exceeds the size limit and is considered a single employer under FLSA so we do not qualify for the exception. In addition, the FLSA provides greater protection than Colorado law.

Therefore, in order to comply with these new requirements, **all** state departments and institutions of higher education must provide the following.

- Reasonable break time for an employee to express breast milk until the child is 24 months old.
- A private place, other than a bathroom, which may be used by an employee to express breast milk.

As to whether the breaks should be paid or unpaid, this depends on whether the employee is eligible for overtime (i.e., cannot deduct pay for exempt employees), the length of the breaks, and a department's practice. Under Director's rule 3-38, work breaks are discretionary and any breaks up to 20 minutes are considered work time (paid). The FLSA requirement does not require paying for breaks exceeding 30 minutes. Departments are strongly encouraged to review their policies on breaks and ensure consistent application and compliance. For example, if it is your practice to pay or not pay for breaks over 30 minutes to express milk, you may continue these practices until we have further guidance from US DOL.

For more information, please access the recently updated Accommodations for Nursing Mothers guidance document located at [www.colorado.gov/dpa/dhr/TechGuides](http://www.colorado.gov/dpa/dhr/TechGuides) under Work-Life. If you have any questions, please contact Joann Nelson at [joann.nelson@state.co.us](mailto:joann.nelson@state.co.us) or for FLSA compliance contact [joel.simpson@state.co.us](mailto:joel.simpson@state.co.us).

### **Change in Non-Tax Dependent Status for Adult Dependent Children**

With the passage of the Patient Protection and Affordable Care Act (PPACA) and the Reconciliation Act of 2010 or "health care reform" as it is commonly called, the IRS has changed its definition of dependent child for tax purposes for this law. This means that employees who are covering adult dependent children on their insurance that were Non-Tax Dependents (NTD) are now considered Tax Dependents by the IRS. Central payroll is making this change effective as of April 1, 2010, for tax purposes.

For employees paid through CPPS, staff is working to programmatically stop date all NTD job screens as of March 31, 2010. If agencies have been manually entering the NTD in a batch, please discontinue entering those batches. CPPS staff is also working on refunding any NTD imputed income that was deducted in April. The refund will process on the employee's current pay cycle (biweekly or monthly).

Going forward, the only situations that will continue to calculate imputed income are Same Gender Domestic Partners (SGDP) and the children of a SGDP. Those rates will be published on both the Central Payroll and Employee Benefits websites. If you have any questions, please contact Collene Smith at [collene.smith@state.co.us](mailto:collene.smith@state.co.us) or 303-866-3810.

### **Health Care Reform: When Will the State Expand Dependent Benefits Coverage for Adult Children Up To Age 26**

Many people have heard that the recently passed federal health reform law will allow coverage for dependent adult children up to age 26. The State plans already offer dependent coverage for children up to age 25. We are being asked when medical and dental coverage will expand to 25-year olds (up to age 26). This requirement is not effective until the plan year beginning on or after September 23, 2010 (six months after the law was signed). That is July 1, 2011, for State plans.

Although major insurance companies are prepared to implement the expanded coverage, employers decide when it is offered. Employees may hear from the medical insurance companies (via customer service or even letters from the insurance company) that they will implement the coverage up to age 26 immediately. However, this implementation does not apply to the State's plans. **Employees who get this information from the insurance company should disregard it.**

The decision was made not to expand coverage earlier than the mandated effective date for several reasons. The primary reason is that the plans for the upcoming year (July 1, 2010-June 30, 2011) are not priced to include the increased costs of adding these dependents. In addition, regulations have not been issued on the requirements employers need to meet to implement this mandate. For example, there is a possibility that written notices and special open enrollments will be required in order to comply with the law. Finally, the State's plans have "grandfathered" status because they were in existence as of March 23, 2010. However, further guidance and regulations are needed on what that status means and what changes will be permitted without losing the "grandfathered" status. The Employee Benefits Unit is closely monitoring developments on the regulatory front in order to implement this very complex law in a responsible manner.

### **Employees Can Make A Difference**

State employees need help in a crisis. Please let your employees know about the number of convenient methods to make tax-deductible donations: direct payroll deduction, Colorado Combined Campaign (#1300), electronic fund transfer for Credit Union of Colorado members, and direct donation by check.